

## REPORT OF THE JUDICIAL CONFERENCE.

SEPTEMBER SESSION, 1943.

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The Judicial Conference, called by the Chief Justice pursuant to 28 U. S. C. § 218, convened on September 28, 1943, and continued in session four days. The following judges were present:

The Chief Justice, presiding,  
First Circuit, Senior Circuit Judge Calvert Magruder,  
Second Circuit, Senior Circuit Judge Learned Hand,  
Third Circuit, Senior Circuit Judge John Biggs, Jr.,  
Fourth Circuit, Senior Circuit Judge John J. Parker,  
Fifth Circuit, Senior Circuit Judge Samuel H. Sibley,  
Sixth Circuit, Senior Circuit Judge Xenophon Hicks,  
Seventh Circuit, Circuit Judge Sherman Minton,  
Eighth Circuit, Senior Circuit Judge Kimbrough Stone,  
Ninth Circuit, Senior Circuit Judge Curtis D. Wilbur,  
Tenth Circuit, Senior Circuit Judge Orrie L. Phillips,  
District of Columbia, Chief Justice D. Lawrence Groner.

Senior Circuit Judge Evan A. Evans of the Seventh Circuit was prevented by illness from attending the Conference. Judge Minton attended in his place.

Judge Sibley was unable to attend the session on the fourth day.

The Attorney General, accompanied by departmental assistants, was present at the opening of the Conference. The Director of the Administrative Office of the United States Courts, Henry P. Chandler, the Assistant Director, Elmore Whitehurst, the Chief of the Division of Procedural Studies and Statistics, Will Shafroth, and other members of the staff of the Administrative Office were in attendance.

The following persons attended by invitation of the Conference to aid it in its deliberations. Senators Frederick Van Nuys, Chairman, and John A. Danaher of the Senate Judiciary Committee and Representatives Hatton W.

Sumners, Chairman, and Clarence E. Hancock of the Judiciary Committee of the House of Representatives attended for part of a session so that there could be an interchange of views upon pending and prospective legislation affecting the work of the courts. Congressman Sam Hobbs of Alabama presented proposed legislation authorizing the experimental sound recording of the proceedings in one court room of the District Court for the District of Columbia.

Circuit Judges Herbert F. Goodrich, Albert B. Maris, and Albert L. Stephens, Justice Justin Miller of the Court of Appeals of the District of Columbia, and District Judges W. Calvin Chesnut, Carroll C. Hincks, John C. Knox, E. Marvin Underwood, Edgar S. Vaught and Charles E. Wyzanski, Jr., all members of committees appointed by the Conference, attended at various times. Solicitor General Fahy and Commissioner Clyde B. Aitchison of the Interstate Commerce Commission considered with the Conference a proposed revision of the method of reviewing orders of the Interstate Commerce Commission. Chief Justice Richard S. Whaley of the United States Court of Claims discussed proposed legislation relating to that court.

*Statement of the Attorney General.*—The Attorney General addressed the Conference with respect to various matters of importance to the work of the federal judiciary. He renewed his recommendations of the court reporter bill, S. 620, H. R. 3142, the referees' bill, H. R. 1107, the public defender bill, H. R. 676, and the federal corrections bills, S. 894, 895, H. R. 2139, 2140, proposed by the Conference in previous years. He emphasized the need, pending passage of the corrections bills, for continued study of means of improvement within the present system. He suggested that the use of pre-sentence investigations be broadened, and that consideration might be given to the desirability of legislation authorizing appellate courts to review sentences and reduce them if excessive, a suggestion which

had been considered by the Conference in 1939 but was abandoned in favor of the modified indeterminate sentence of the proposed corrections bill (S. 895, H. R. 2140).

He expressed approval of the Conference committee's report on United States Commissioners, but renewed his recommendation that some commissioners be placed on a salaried basis. He recommended that further study be given to the problem of providing for the trial of petty offenses in the federal judicial system. In connection with the report of the committee on imprisonment for failure to pay a fine he recommended that mandatory fine provisions in federal criminal statutes be eliminated, and that no fine be imposed unless, on the basis of a pre-sentence report, it appeared reasonably probable that the defendant could pay it. He expressed general approval of the reports of the Conference committees on the selection of jurors, on bailiffs, and on habeas corpus procedure. In connection with the work of the committee on the treatment of insane persons charged with crime, he called attention to the growing importance of that problem created by the fact that of 4,600 persons convicted under the Selective Training and Service Act 200 were found to be of unsound mind. The Attorney General said that the Department was urging agencies for the investigation of criminal offenders to do everything possible to uncover such cases before conviction, and he emphasized the desirability of probation officers giving careful attention to the defendant's mental condition.

He urged that in cases involving violations of war legislation, particularly of the Emergency Price Control Act of 1942, and cases involving serious war frauds, sentences commensurate with the gravity of the offense be imposed. He pointed out that in placing Selective Service defendants on probation a condition of probation should always be that the defendant comply with his obligations under the Act; in some cases it appears that no such condition had been imposed. In connection with the increase in

naturalization cases noted in the Director's Report, the Attorney General said that the resolution adopted by the Conference last year with respect to the dignity of naturalization proceedings had been very well received. In consequence a manual of principles and procedures which will serve to emphasize the significance of citizenship and dignify naturalization proceedings, entitled "Gateway to Citizenship", has been prepared by the Immigration and Naturalization Service for distribution to judges and officers concerned with naturalization.

He recommended greater uniformity in appellate procedure in the various circuit courts of appeals, particularly as to such matters as the form of briefs, the content of printed records and the time for filing briefs, pointing out that the present diversity in practice imposed a serious burden and inconvenience on divisions of the Department which were constantly appearing in all of the circuit courts of appeals. He recommended also that circuit courts of appeals adopt the practice of inviting the Government to file briefs as *amicus curiae* in private litigation involving important questions of public interest, provided that the invitation leave the Government free to decline.

While he expressed the Department's approval of a number of measures previously approved by or currently presented to the Conference, he emphasized the especial importance of the court reporter bill and the legislation proposed by the committee on the selection of jurors.

*The Administration of the United States Courts.—Report of the Director.*—The Director submitted to the Conference his fourth annual report, reviewing the activities of the Administrative Office for the fiscal year ended June 30, 1943, and presenting detailed statistical data concerning the work of the federal courts. The Conference approved the Director's report, and ordered it to be released immediately for publication.

*State of the Dockets.—Number of Cases Begun, Disposed of, and Pending, in the District Courts.*—The Director's annual report contains statistical comparisons of the state of the dockets of the federal courts for the fiscal year ended June 30, 1943, with those of previous years. In addition, each senior circuit judge presented to the Conference reports on the work of the courts in his circuit.

As the following table indicates, the number of civil cases pending in the district courts on June 30, 1943, was somewhat in excess of that in preceding years, although the number commenced was measurably less.

<i>Fiscal Year</i>	<i>Commenced</i>	<i>Terminated</i>	<i>Pending</i>
1940	34,734	37,367	29,478
1941	38,477	38,561	29,394
1942	38,140	38,352	29,182
1943	36,789	36,044	29,927

(In conformity with the statistical basis used in the Director's Report, these figures include the courts of the Canal Zone and Virgin Islands. In previous reports of the Conference statistics for those courts have been excluded.)

As a result of the war the character of civil cases pending has changed materially. The number of private civil cases commenced in the district courts decreased by 16%, and the number of new bankruptcy proceedings decreased from 52,109 to 34,711—almost 33 1/3%. On the other hand, the number of government civil cases filed within the past fiscal year has increased about 12%. More than twice as many condemnation cases were brought during 1942 as in the previous year, and for 1943 the number was further increased by 25%. But the number of condemnation cases filed in the second half of the past year was less than in the first half, indicating that this burden on the federal courts attributable to the exigencies of the war has passed its peak. Naturalization cases likewise increased by approximately 17% over those of 1942. The total number of criminal prosecutions increased by nearly 10%, an in-

crease more than accounted for by the number of prosecutions for offenses related to war measures. Prosecutions under the Selective Training and Service Act numbered 7,934, and 2,311 prosecutions were brought for violation of price control and rationing regulations. While the number of criminal prosecutions substantially increased, the number of defendants involved decreased slightly.

*Delays in the Disposition of Cases.*—The report states that generally the federal courts made an excellent record in the disposition of business during the past year. The district courts disposed of slightly fewer cases than were filed, largely because of the increase in the number of condemnation cases. Exclusive of condemnation, habeas corpus and forfeiture cases the median time for the disposition of civil cases terminated by court or jury trial in district courts having only federal jurisdiction was 10.9 months. Marked progress has been made in eliminating arrearages in two highly congested districts. The number of civil cases pending on the trial calendars in the Southern District of New York has been reduced by nearly one-half during the past year, although, owing to the increase in the number of cases docketed which because of war conditions cannot now be tried, the number of civil cases pending in that district remains about the same. In the District of Columbia the time between the placing of cases on the trial calendars and their trial has been reduced from eleven months on June 30, 1941, to five months on June 30, 1943. The circuit courts of appeals during the past year reduced the number of cases pending by about 6%. The median time required for disposition of cases actually heard in those courts, exclusive of the time required for the disposition of petitions for rehearing, was 6.5 months.

As in past years the Administrative Office has acted as a clearing house for information with respect to the availability of judges for assignment to districts in which the dockets are congested and has cooperated with the

Chief Justice in securing the necessary consents to the assignments made. The number of judges assigned for service in district courts outside their circuits, although substantially less than in 1942, remained considerable, twenty-eight such assignments having been made. The Act of December 29, 1942, 56 Stat. 1094, authorized the Chief Justice to assign circuit judges to serve temporarily in other circuits. During the past year four such assignments of circuit judges were made.

*Draft Deferment of Judicial Personnel.*—As of August, 1943, according to the Director's report, 198 officers and employees among the supporting personnel of the federal judiciary had entered the armed services. The Act of April 8, 1943, Public Law No. 23, 78th Congress, First Session, authorized the Chief Justice to appoint a committee with exclusive power to request deferments of federal judicial employees. The committee, consisting of Chief Justice Groner, Circuit Judge Goodrich, and District Judge William C. Coleman, has since its appointment requested the deferment of eleven persons; prior to its appointment nine persons had been granted deferments out of a total personnel of 2,083 in the classes of the court service for which statistics are available.

*Cost of Jurors.*—The Director's Report called attention to the further reduction in the cost of jurors in the federal courts, the cost being about 8 per cent less during the past than during the preceding year. This has made possible a reduction in the appropriation for payment of jurors. The decrease in cost is attributable in part to the use of pre-trial conferences and in part to the exercise of greater care by the courts in limiting the number of persons called for jury service as nearly as possible to the number actually required.

*Qualifications of Probation Officers.*—The Director's Report pointed to an improvement in the qualifications of probation officers as a result of the resolution adopted by the Conference last year. Of the fifty-eight probation officers appointed in 1943, forty-seven had had a

college education, and forty-six had had two years' experience in welfare work, as was recommended by the Conference's resolution. The Report pointed further to the economic value of probation and to the war service rendered by probationers, of whom 4,458 are known to have entered the armed forces. Four have been decorated for gallantry or exceptionally meritorious service, and eighteen have been dishonorably discharged.

*Additional Judgeships.*—After considering the report of the Director and the statements of the respective Senior Circuit Judges the Conference recommended that provision be made for an additional district judge for the District of Delaware and an additional circuit judge for the Third Circuit. It recommended the passage of S. 932 and H. R. 2395 providing for an additional district judge for the Eastern District of Pennsylvania, and of S. 716 providing for an additional circuit judge for the Seventh Circuit. It considered the proposed bills authorizing the appointment of an additional district judge for the District of Minnesota (H. R. 1619) and one for the District of North Dakota (S. 704) and found no necessity for an additional judge in either district.

*Supporting Judicial Personnel—Law Clerks—Bailiffs.*—At the last session of the Conference a committee was appointed, of which Judge Biggs was chairman, to consider the level of salaries of supporting judicial personnel. After extended study and conferences with the Civil Service Commission the committee prepared a report which was presented to the Conference by Justice Miller. The report proposed classifications of law clerks and secretaries to judges and of court librarians comparable approximately to the standard civil service classifications. It recommended a maximum allotment of \$6,500 for clerical service for each district or circuit judge and of \$7,500 for each senior circuit judge or senior district judge in districts having more than five judges. These classifications and



allotments were approved by the Conference with the exception that an additional classification of Clerical-Administrative-Fiscal-2 for library attendants was directed to be added. The Conference adopted the following statement of policy as proposed by the committee:

Resolved, that it is the sense of the Conference that the compensation of secretaries and law clerks of circuit and district judges (exclusive of temporary additional compensation) shall be fixed by the Director of the Administrative Office without regard to the Classification Act of 1923, as amended, except that the salary of a secretary shall conform with that of the main (CAF-4), senior (CAF-5), or principal (CAF-6) clerical grade, or assistant (CAF-7), or associate (CAF-8) administrative grade, as the appointing judge shall determine, and the salary of a law clerk shall conform with that of the junior (P-1), assistant (P-2), associate (P-3), full (P-4), or senior (P-5) professional grade, as the appointing judge shall determine, subject to review by the Judicial Council of the Circuit if requested by the Director, such determination by the judge otherwise to be final; *Provided*, That (exclusive of temporary additional compensation) the aggregate salaries paid to secretaries and law clerks appointed by one judge shall not exceed \$6,500 per annum, except in the case of the senior circuit judge of each circuit and the senior district judge of each district having five or more district judges, in which case the aggregate salaries shall not exceed \$7,500.

The Conference approved the reclassification of probation officers in the assistant, associate and full professional grades (P-2, P-3 and P-4) and of clerk-stenographers in probation offices in the assistant, main and senior clerical grades (CAF-3, CAF-4, and CAF-5) as recommended by the committee. The committee reported that the current appropriation by Congress is sufficient to carry out in considerable part a reclassification of employees of the clerks' offices in accordance with standards embodied in advisory

classifications prepared by the Civil Service Commission, and that such reclassifications are being carried into effect by the Administrative Office so far as the funds appropriated permit. The Conference approved the report as a whole as modified and continued the committee with authority to present the action of the Conference to Congress.

The committee on law clerks for district judges, appointed at the last Conference, of which Judge Knox is chairman, reported that inquiry of the district judges disclosed that 50 who did not have law clerks desired them. The current appropriations are sufficient to provide for 25 new law clerks, whom the Conference directed be provided for district judges in conformity to an allocation among the various circuits proposed by the Director. The Conference continued the committee on law clerks.

Judge Maris, as chairman, presented the report of the committee on bailiffs, appointed by the last Conference. The report found that serious hardship results from the fact that at present bailiffs in the federal courts are paid only on a per diem basis while court is in session or the judge is in chambers, and that there is need for a permanent officer who can act as court crier, maintain order while court is in session and render personal assistance to a judge in the performance of his duties both in the court room and in chambers. Such an officer should not be appointed by the marshal, as are bailiffs at present, but by the judge. The report pointed out that legislative authority for the permanent appointment of court criers exists in § 5 of the Judicial Code, 28 U. S. C. § 9, but that no appropriations for such officers have been made since 1932. It recommended that the position of court crier for district courts be revived by a proposed amendment to § 5 of the Judicial Code which would provide that the crier perform also the duties of bailiff and messenger to the judge, at an annual salary of \$1,800; that Rev. Stat.

§ 715, 28 U. S. C. §§ 9, 595 be repealed; that the position of temporary bailiff appointed by the marshal when needed be retained; and that the position of messenger for each circuit judge desiring such assistance, at a salary of \$1,500, be revived. The Conference approved the report with the qualification that in preparing the budget estimates the Director be authorized to ask only for sums sufficient to provide for the number of messengers probably desired by circuit judges as indicated by the judges present.

*Budget Estimates.*—The Conference approved the estimates of expenditures and appropriations necessary for the maintenance of the United States courts and the Administrative Office for the fiscal year 1945, as submitted by the Director, and also approved an estimate in the sum of \$67,600 for a deficiency appropriation for fees for 1943 of United States commissioners including conciliation commissioners.

*United States Commissioners.*—At the last Conference the Director presented a report on the operations of the United States commissioner system, and a committee of the Conference, of which Judge Hincks is chairman, was appointed to make a report on this subject with recommendations to the Conference. The report of the committee, presented to the Conference by Judge Hincks, made a number of proposals for improvement in the administration of the commissioner system. The Conference approved the committee's report. In conformity to the report the Conference recommended the adoption of a bill to provide a simplified system of fees for commissioners by prescribing consolidated fees designed to accomplish on the average a moderate increase in the compensation of commissioners; a bill providing that commissioners be furnished without cost to them with certain supplies necessary for the efficient discharge of their duties; a bill authorizing payment of commissioners' fees upon approval of their accounts by the Director, subject

to final settlement in the General Accounting Office; a bill authorizing the wardens of federal penal institutions to administer the poor debtor's oath to indigent convicts as a basis for their discharge from custody for failure to pay a fine, saving to the convict the right to apply to a United States commissioner in the event that the warden should withhold favorable action; and bills authorizing a referee in bankruptcy or national park commissioner also to be appointed United States commissioner. The Conference adopted the following resolutions proposed by the committee:

Resolved that it is the sense of the Conference that the efficiency of the federal judicial system depends in substantial measure upon the proficiency and qualifications of the United States commissioners. The Conference therefore recommends that the district judges, in whom the power of appointment and removal is lodged, terminate the appointments of all commissioners who as shown by their quarterly reports to the Administrative Office are handling cases involving not over twenty defendants per year, save in exceptional situations where the district judges find it otherwise essential in the administration of justice, and that the termination of such appointments be accomplished either forthwith by order of court or by the expiration of the terms of such appointees;

And that the Director be authorized and directed to obtain from the district judges and from other sources data as to the number of commissioners and to report the same periodically to the Conference with a view to future modification of this resolution or to the endorsement of legislation in the premises as future experience shall suggest.

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Resolved, that it is the sense of the Conference that the appointment of commissioners should be confined to persons of sound and independent character, of good

intelligence and common sense, and of good repute, and that when feasible only those should be appointed who are free from present activity in partisan politics, and that when judges in making an appointment are confronted with a choice between lawyer and layman, each having in combination the foregoing qualifications to substantially the same degree, preference should normally be given to the candidate having the additional advantage of education and experience in law. And it is recommended that in so far as feasible in each district the judges arrange periodically for a conference with the commissioners for the discussion of problems of mutual interest.

And it is further resolved that the Director be authorized and directed to obtain from the district judges statements showing the qualifications of each commissioner hereafter appointed or reappointed, and from such statements and from any other data submitted from other sources to make appropriate reports on the subject-matter to the Conference.

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Resolved that the Conference endorse as representing a sound procedure and good practice the Manual for United States Commissioners as proposed by the Committee; that the Director of the Administrative Office be authorized and directed to prepare a revision of the 1929 compilation of the fiscal "Instructions to United States Commissioners"; that the Director be authorized to reproduce and circulate to all the United States commissioners, including those hereafter appointed, copies of said Manual and Instructions with such revisions thereof as he shall hereafter prepare to bring the same into conformity with future changes in the law or with Federal Rules of Criminal Procedure.

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Resolved that in the opinion of the Judicial Conference a warrant of arrest lawfully issued by any court of the United States or by a United States

commissioner should be given a vitality coextensive in territorial scope with the jurisdiction of the United States, and that this opinion be communicated to the Advisory Committee on Rules of Criminal Procedure for its consideration.

The committee expressed dissatisfaction with the operation of the commissioner system in Alaska, where it found that the commissioners exercise a large number of non-judicial functions which in some cases seemed inconsistent with their judicial duties. But it concluded that the commissioner's status was so intimately related to the larger question of the organization of the territorial government as to be difficult if not impossible of regulation separately. The Conference, at a later stage in its sessions, called to the attention of the representatives of the Judiciary Committees of the Senate and House of Representatives the misgivings felt by the committee as to the soundness of the commissioner system in Alaska, and the committee's suggestion of the advisability of creating a suitable commission to study the needs of the judicial establishment and possibly of the entire governmental organization of that territory.

With respect to the desirability of extending the existing jurisdiction of commissioners to try petty offenses committed in places over which the United States has exclusive or concurrent power of legislation, 18 U. S. C. §§ 576, 576a, so as to authorize the trial by commissioners of minor offenses wherever committed, the committee was equally divided. The Conference accordingly authorized the Chief Justice to appoint a committee to study and report to the Conference whether it would be appropriate and desirable to confer on the commissioners or similar officers jurisdiction for the trial in the first instance of minor offenses, and to recommend any legislation which the committee may think desirable. The Conference directed that the committee on United States commissioners be continued to present its recommendations to Congress; otherwise the committee was discharged.

*Selection of Jurors.*—Two years ago a committee of the Conference, of which Judge Knox is chairman, was appointed to study the selection of jurors in the federal courts. Its report was submitted to the Conference last year and copies were directed to be distributed among the federal judiciary and other interested persons. Copies of the report were accordingly sent to all members of the federal judiciary, all clerks of court and jury commissioners, 73 bar associations, the press, and large numbers of persons expressing an interest in the subject. The report was considered at several of the judicial conferences of the circuits, and replies from 31 bar associations were received. As a result of the criticisms and suggestions received the committee submitted a revised report which was presented by Judge Knox and approved by the Conference.

The Conference recommended the adoption of legislation, drafted by the committee, which would amend 28 U. S. C. § 411 so as to prescribe uniform qualifications for jurors in federal courts; amend 28 U. S. C. § 412 so as to increase to \$10 the per diem compensation of jury commissioners, authorize the appointment, with the approval of the Judicial Conference, of full-time jury commissioners where needed and more accurately define the functions of jury commissioners; and amend 28 U. S. C. § 600 so as to authorize the payment to jurors of additional allowances not to exceed \$2 per day for actual daily transportation expenses, or subsistence where daily travel is impracticable, and of a per diem not to exceed \$10 for each day in excess of thirty spent in hearing a single case. It approved the committee's numerous recommendations among which some of the more important are the following:

Where feasible the practice should be followed of requiring each prospective juror to answer a questionnaire tending to elicit information as to his qualifications for jury service and, where conditions permit, to be personally interviewed. A form of questionnaire was suggested by the report;

Study should be devoted in each district to the improvement of the form and content of jury record systems;

The senior district judge in multiple judge courts, assisted by the jury commission, should be made responsible for the administration of jury selection, trial calendars and assignment of jurors. The committee was of the opinion that in most metropolitan districts central calendar systems and jury pools could be used to advantage so as to reduce the number of jurors held in court while awaiting their selection for service in trials;

Accommodations sufficient to provide for the comfort of the jurors, particularly where women jurors are eligible to serve, should be made available;

The selection of petit jurors from talesmen, as authorized by 28 U. S. C. § 417, should be reduced to a minimum. The use of an emergency panel of jurors who would be willing to report within a short time on notice by telephone was suggested as an alternative;

Jurors should be given accurate instruction as to the nature of their duties, by carefully prepared oral charges to the grand jury when it is impaneled and to petit jurors when they report for service. As an aid to this end the Conference approved the use of a handbook for petit jurors prepared by the Administrative Office and recommended that copies be made available to all district courts wishing to use it;

28 U. S. C. § 417a should be amended to permit alternate jurors in criminal cases as in civil cases to replace any jurors who for any substantial reason become unable to perform their duties;

The number of peremptory challenges allowed to the Government and to the defendant in criminal cases should in general be the same, and the number of challenges allowed a defendant should be reduced from ten to six in all cases except trials for capital offenses;

The practice of conducting the voir dire examination of trial jurors by the judge alone, aided by the suggestions



or requests of counsel, should be followed in all districts;

Waivers of jury trial and stipulations for trial by juries of less than twelve persons or for verdicts of a stated majority of the jurors should be encouraged;

Appropriate rules of procedure should be framed to permit trial jurors in the discretion of the judge to take notes on the evidence presented to them, and to consult those notes during their deliberations, provided that the notes be treated as confidential and that on rendition of a verdict or discharge of the jury they be delivered to the clerk and destroyed;

The calling for jury service of persons who are employed in essential war industries should be avoided, and the procedure followed in the New York courts, by which prospective jurors employed in war industries can be excused without the necessity of appearance in court upon submission of a written statement approved by their employer, was recommended as an example. S. 999, designed to provide statutory authority for the use of such a procedure in the federal courts, was approved in principle, but the committee suggested that this recommendation could best be carried out administratively.

*Bankruptcy.*—Judge Phillips presented the report of the committee on bankruptcy, authorized by the last Conference to consider various matters relating to the administration of the bankruptcy laws. The committee reported that as a result of opposition to certain provisions of the referees' bill, H. R. 1107, as approved by the last Conference, it seemed wise to make certain amendments to the bill. Accordingly the Conference adopted the recommendation of the committee that H. R. 1107 be amended by eliminating § 34 (b) which limited the discretion of district judges in the reappointment of referees, and by substituting for the present provisions relating to the resignation and retirement of referees a provision according to full-time referees and full-time employees in referees' offices the benefits of the Civil Service Retirement Act of

May 29, 1930, as amended; the Conference renewed its support of H. R. 1107 as thus amended.

The Conference approved the recommendation of the committee that district judges be urged to call bankruptcy conferences in their respective districts to be attended by the district judge or judges, the referees in bankruptcy, and Mr. Covey of the Administrative Office with the object of bringing about proper rules and practices relating to indemnity funds. It resolved that the Administrative Office should exercise full supervision over indemnity funds and practices with respect to them, and that it should endeavor to secure the adoption by the courts of the plan recommended by it for administering official funds and regulating accounting practices of conciliation commissioners, with such modifications in particular districts as may seem necessary.

The Conference approved the committee's recommendation that the court be authorized in appropriate cases to make the discharge of the bankrupt conditional upon his application of income in excess of necessary living expenses, and of non-exempt after-acquired property, to the satisfaction of his debts. It accordingly recommended the enactment of legislation amending the discharge provisions of the Bankruptcy Act in accordance with the recommendations of the Thacher-Garrison Report of December 5, 1931, Senate Document No. 65, 72nd Congress, 1st Session, except that the proposal of that report for the establishment of an official corps of examiners and administrators in bankruptcy was disapproved. In its place the Conference recommended that referees be authorized to call upon trustees and United States attorneys to make investigations and reports respecting bankrupts.

The Conference approved in principle H. R. 2329, amending the provisions of § 75 (a) of the Bankruptcy Act with respect to the appointment of conciliation commissioners, and suggested amendments eliminating divisions as units for the appointment of conciliation commissioners or supervising conciliation commissioners, and

making referees in bankruptcy eligible for appointment as supervising conciliation commissioners. The Conference instructed the Director to suggest to district judges that they do not fill vacancies in the office of referee in bankruptcy if there remain in the district a sufficient number of referees to dispose of the bankruptcy business efficiently. The Conference recommended that § 53 of the Bankruptcy Act be amended to read as follows:

“The Director of the Administrative Office of the United States Courts annually shall lay before Congress statistical tables which will accurately reflect the business transacted by the several bankruptcy courts and other pertinent data.”

The Conference adopted the following resolution:

“Resolved that the Administrative Office be authorized to make general surveys of referees' bonds as often as may be considered necessary, and whenever any of such bonds appear to be insufficient or otherwise irregular, to call the facts to the attention of the district judge whose district is affected, and to submit such recommendations in reference thereto as may be considered appropriate under the circumstances;

And be authorized to call to the attention of district judges any and all irregularities or improper practices in their respective districts which may be disclosed by reports of examiners or otherwise brought to the attention of the Administrative Office, and to submit its recommendation as to the proper steps to be taken to rectify such conditions;

That the Administrative Office be authorized to tender to district judges the available services of the Bankruptcy Division for the purpose of making comprehensive surveys of the various factors affecting bankruptcy administration in their respective districts, with a view to recommending such improvements or changes in bankruptcy practice and procedure as may tend to promote more efficient and uniform administration.

Be it further resolved that until legislation is passed so permitting, the payment of the premium on referees' bonds from the indemnity fund be not approved by the Administrative Office;

And that when the subscription price of the Referees' Journal is segregated from dues of the Referees' Association, the payment of the subscription price thereof from the indemnity fund be approved by the Administrative Office;

And that it is the sense of the Conference that the expenses incurred by referees in attending conferences of referees held within a judicial district and officially called by the district judge or district judges thereof, and conferences within a judicial circuit officially called by the senior circuit judge or circuit council, should be allowed and paid as proper disbursements from the indemnity fund; and that expenses incurred by the referees in attending national conventions of the Referees' Association and meetings of the National Bankruptcy Conference, not called by or conducted under the auspices of federal judges, should not be allowed as proper disbursements from the indemnity fund."

The committee on bankruptcy was authorized to continue its studies and directed to report its further recommendations at the next annual Conference.

*Procedure for Convening District Courts of Three Judges.—Appellate Review of Orders of the Interstate Commerce Commission.*—The report of the committee appointed to recommend a uniform procedure for the convening of district courts of three judges, of which Judge Evans was chairman, was presented by Judge Maris. The committee recommended the adoption of legislation providing for a uniform method of assembling district courts of three judges under 15 U. S. C. § 28, 49 U. S. C. § 44, and 28 U. S. C. §§ 47, 380, 380a, incorporating in the Judicial Code all presently effective provisions of the Urgent Deficiencies Act, and clarifying the venue provi-

sions of that Act. The Conference approved the report and recommended the adoption of the bill which it proposed, with the addition of a clause providing that

“For the purposes of this Act, the District of Columbia shall be deemed a judicial circuit and the Chief Justice and Associate Justices of the United States Court of Appeals of the District of Columbia shall be deemed respectively the Senior Circuit Judge and Circuit Judges of the Circuit.”

Judge Learned Hand, as chairman of the committee on appellate review of orders of the Interstate Commerce Commission and certain other administrative orders, reported that differences of opinion had developed within the committee which made it desirable to secure further instructions from the Conference. Accordingly Commissioner Aitchison and Solicitor General Fahy were invited to attend the Conference and present their views with respect to the review of orders of the Interstate Commerce Commission. After hearing them the Conference adopted the following resolution:

“Resolved, that it is the sense of the Conference that review of orders of the Interstate Commerce Commission, and of other administrative orders now reviewable by a district court of three judges from whose decision an appeal lies to the Supreme Court, should be upon petition to the appropriate Circuit Court of Appeals on the record made before the administrative body, that any further review should be by the Supreme Court on petition for writ of certiorari, and that the United States and the Commission should each have the right to petition for writ of certiorari.”

The committees on the review of orders of the Interstate Commerce Commission and certain other administrative orders and on three-judge court procedure were consolidated and Judge Phillips was appointed chairman of the consolidated committee, with directions to draft legislation which would carry out the foregoing resolution of

the Conference. The committee was directed to consider the procedure on review of such orders by the circuit court of appeals, including the scope of the record to be brought before that court, and to incorporate its recommendations in the proposed legislation.

*Habeas Corpus Procedure.*—The report of the committee on habeas corpus procedure, of which Judge Parker is chairman, was extensively considered by the Conference. The committee prepared two bills to carry out its recommendations, one regulating the procedure in federal courts on applications for writ of habeas corpus to inquire into the legality of detention of persons held by reason of conviction of crime by a federal or state court, the other limiting the jurisdiction of federal courts to issue the writ for that purpose. The Conference approved the procedural bill, referred to in the committee's report as statute "B", but with the substitution for section 1 of the alternative section 1 proposed by a minority of the committee. The bill as approved among other things makes applicable to habeas corpus proceedings the doctrine of res judicata but allows a judge to whom application for the writ has been made to grant a rehearing at any time; allows the certificate of the trial judge as to facts occurring at the trial to be filed in lieu of requiring him to testify in the habeas corpus proceeding; allows testimony to be taken by affidavit in the discretion of the judge; and makes admissible evidence taken on prior habeas corpus applications.

The jurisdictional bill, statute "A", was substantially amended by the committee just prior to the Conference and received additional amendments at the Conference. The Conference recommended the adoption of the following bill, and appointed Judges Parker, Phillips and Stone to act as a committee on style, with instructions to submit to each member of the Conference any revisions of the bill made by them:

A Bill to Regulate the Review of Judgments of  
Conviction in Certain Criminal Cases.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no Circuit or District Judge of the United States shall have jurisdiction to issue a writ of habeas corpus to inquire into the validity of imprisonment of a prisoner held in custody pursuant to a conviction of a court of any state, or to release such prisoner in any habeas corpus proceeding, unless it shall appear that the petitioner has no adequate remedy by habeas corpus, writ of error coram nobis or otherwise in the courts of the state. Where a prisoner in custody pursuant to a conviction of a court of any state, claiming the right to be released on the ground that the judgment has been obtained in violation of the Constitution or laws of the United States, who has no adequate remedy in a state court by habeas corpus, writ of error coram nobis or otherwise, files a petition for writ of habeas corpus before any Circuit or District Judge of the United States, such judge shall determine whether there is reasonable ground for the issuance of the writ, and, if so, shall issue same and shall cause a court of three judges to be constituted as provided by Section 266a of the Judicial Code, (28 USCA 380a), who shall constitute a special court for the hearing of such petition. The decision of such court shall be reviewable by the Supreme Court of the United States by writ of certiorari. If the judge to whom application for the writ is made shall determine that there is no reasonable ground for issuing same, he shall dismiss the petition, from which action an appeal shall lie to the Circuit Court of Appeals for the Circuit, upon the filing of the certificate required by 28 USCA 466. The phrase "no adequate remedy" as used in this section means absence of state corrective process or existence of exceptional circumstances, rendering such process unavailable to protect his rights.

Sec. 2. Any prisoner in custody pursuant to a judgment of conviction of a court of the United States, claiming the right to be released on the ground that the judgment has been obtained in violation of the Constitution or laws of the United States, may apply by motion, formally or informally, to the court in which the judgment was rendered to vacate or set aside the judgment, notwithstanding the expiration of the term at which such judgment was entered. Such court shall thereupon cause notice of the motion to be served upon the United States attorney and grant a prompt hearing thereon and find the facts with respect to the issues raised thereon. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was in excess of the maximum prescribed by law or otherwise open to collateral attack or motion to correct sentence, or that there had been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial as may appear appropriate. An appeal from an order granting or denying the motion shall lie to the circuit court of appeals. No circuit or district judge of the United States shall entertain an application for writ of habeas corpus in behalf of any prisoner who is authorized to apply for relief by motion pursuant to the provisions of this section, unless it appears that it has not been or will not be practicable to have his right to discharge from custody determined on such motion because of the necessity of his presence at the hearing, or for other reasons.

*Imprisonment for Failure to Pay a Fine.*—The Conference approved the report of the committee on imprisonment for failure to pay a fine in criminal cases, which was presented by its chairman, Judge Goodrich, and adopted the following resolution:



“Resolved, that the Judicial Conference recommend to the district judges that where it is not mandatory, a fine should not be imposed upon a defendant in a criminal case when he is sentenced to imprisonment, unless there is reasonable expectation that the defendant can pay the fine imposed or unless the judge considers the imposition of a fine particularly appropriate to the offense;

“That where the imposition of a fine is obligatory under the applicable statute, the sentencing judge should not commit the defendant for non-payment of the fine (1) unless such commitment is required by law, or (2) unless the sentencing judge, in the exercise of his discretion, concludes that the additional commitment is desirable in the particular case;

“That the printed form of judgment used in the district courts be amended by the elimination of the printed clause providing for the commitment of the defendant for the non-payment of any fine which may have been imposed;

“That these recommendations be brought to the attention of the district judges at the meetings of the Judicial Councils in the various circuits.”

*Participation in Political Activities.*—The Conference adopted the following resolution:

“Whereas with rare exceptions the officers and employees of the federal courts have kept free from political activities during their terms of service, but it seems desirable to guard against deviations from this course, and for that purpose to recommend a standard;

“Therefore be it resolved, that it is the sense of the Judicial Conference that it is incompatible with the proper service of the federal judiciary for its officers or employees to become candidates for political office or participate in other political activities of a kind forbidden to employees of the executive branch of the Government by the Hatch Act (18 U. S. C. 61h).”

*Claims Against the United States.*—After considering the pending bills authorizing the prosecution of suits in tort against the United States, (S. 1114, H. R. 1356, 817), some of which provide for appellate review by the Court of Claims where the suit is brought in a district court, the Conference authorized the Chief Justice to appoint a committee to study generally the subject of the prosecution of claims against the United States, and directed the committee to advise the committees of Congress that the Conference is opposed to conferring appellate jurisdiction on the Court of Claims.

*Legislation Recommended.*—The Conference renewed its recommendations in support of the sentencing and parole bills and the bills for waiver of indictment (S. 895, 894, 28, H. R. 2140, 2139, 1207, 327), the court reporter bill (S. 620, H. R. 3142), the legislation with respect to clerks' fees (S. 471, 472, H. R. 1569, 1623), the bill (H. R. 676) providing for the appointment of public defenders in the district courts of the United States, with an amendment making the services of public defenders available in habeas corpus cases in which the petitioner is proceeding in forma pauperis, and the bill (S. 1324, H. R. 3229) to remove the civil disabilities of probationers successfully completing their probation. The Conference also approved the following bills: H. R. 1208, authorizing the judicial council of any circuit to dispense with the holding of a stated term of a district court or the maintenance of a clerk's office at a place designated by law if in either case the council finds that the term of court or clerk's office dispensed with is not required by the public convenience; S. 640 and H. R. 2969, to simplify the method of handling trust funds of clerks of court and marshals; H. R. 1197, to provide for the trial by judicial tribunals of the issue of good behavior of certain federal judges.

*Committees Appointed.*—Pursuant to resolutions of the Conference the Chief Justice appointed the following committees with directions to report their recommendations at the next Conference:

A committee on the trial of minor offenses by commissioners or similar federal officers, consisting of Chief Justice Groner, Chairman, Circuit Judge Thomas W. Swan, District Judges George H. Moore and Charles E. Wyzanski, Jr.

A committee on claims against the United States and the procedure for their prosecution, consisting of Judge Stone, Chairman, Circuit Judge Joseph C. Hutcheson, Jr., District Judges Frederic P. Schoonmaker and George C. Sweeney, Chief Justice Richard S. Whaley of the Court of Claims.

A committee to consider the adequacy of existing provisions for the protection of the rights of indigent litigants in the federal courts, consisting of Circuit Judge Augustus N. Hand, Chairman, Circuit Judge Otto Kerner, District Judges Guy K. Bard and Eugene Rice.

A committee to study the use of pre-trial procedure in the federal courts, consisting of Judge Parker, Chairman, Circuit Judge Alfred P. Murrah, District Justice Bolitha J. Laws, District Judge Paul J. McCormick.

A committee to consider the representation of district judges in the Conference of Senior Circuit Judges. This committee was authorized to be appointed in response to the resolution of the Judicial Conference of the Seventh Circuit, recommending the annual election from each circuit of one district judge to be a member of the succeeding Conference of Senior Circuit Judges. The committee consists of Judge Phillips, Chairman, Chief Justice Groner, Judge Parker.

A committee to consider in consultation with the Director methods of improving the existing scheme of collecting and compiling federal judicial statistics by the Administrative Office. The committee consists of Judge Learned Hand, Chairman, Circuit Judges William Denman and Charles E. Clark, District Judges William H. Kirkpatrick and Royce H. Savage.

A committee to consider the proposal, approved by the Judicial Conference of the Ninth Circuit, that 18 U. S. C. § 541 be amended so as to make the definition of "felony" depend upon the punishment actually inflicted rather than the punishment which could lawfully be imposed. The committee consists of Judge Wilbur, Chairman, Circuit Judge Peter Woodbury, District Judges Walter C. Lindley and J. F. T. O'Connor.

*Committees Continued.*—The Conference took no action on the report of the committee on a uniform time for appeal to Circuit Courts of Appeals, and directed that the committee be continued for further investigation of the subject. No reports were submitted by the committee on a special court of patent appeals, the committee on the treatment of insane persons charged with crime in the federal courts, and the committee on library funds of certain Circuit Courts of Appeals. The Conference directed that these committees be continued, and that Chief Justice Groner be added to the committee on library funds.

*Advisory Committee.*—The Conference continued the committee, consisting of the Chief Justice, Judges Biggs, Parker and Stone and Chief Justice Groner, to advise and assist the Director in the performance of his duties.

The Conference declared a recess, subject to the call of the Chief Justice.

For the Judicial Conference:

HARLAN F. STONE,  
*Chief Justice.*

November 5, 1943